



California Stormwater Quality Association™

Dedicated to the Advancement of Stormwater Quality Management, Science and Regulation

November 28, 2006

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Executive Office
State Water Resources Control Board
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**Subject: CASQA comments on CEQA Scoping Meeting Informational Document –
Development of Sediment Quality Objectives for Enclosed Bays and Estuaries**

Dear Chair Doduc and Board Members:

Thank you for the opportunity to provide comments on the *CEQA Scoping Meeting Informational Document – Development of Sediment Quality Objectives for Enclosed Bays and Estuaries* (August 17, 2006), which describes draft sediment quality objectives (SQOs) and implementation measures. Thank you as well for conducting the three recent Status Report Workshops and Public Scoping Meetings on the informational document. We found these meetings to be informative and constructive – similar to shared fact-finding sessions, so we thank staff for their willingness to share their proposals at an early stage. We encourage the State Water Board to continue conducting such meetings, particularly on topics such as this one, which may be controversial, and/or complex and for which a new program is being designed. We believe the resulting program will be much better with early and regular public involvement.

Many of the dischargers affected by the State's development and implementation of sediment quality objectives are members the California Stormwater Quality Association (CASQA)¹. As a result, CASQA has been tracking the program's development, including participating on the Sediment Quality Advisory Committee. Our comments below are focused on specific issues in the information scoping document. For each, we reiterate the issue heading, baseline and proposed alternatives, and staff recommendation; followed by CASQA's recommendation.

As a general comment, we note that the draft informational document focuses primarily on technical points, not on CEQA analysis. We understand that it is difficult to conduct a CEQA analysis when the proposed project is still being defined (e.g., what implementation actions would be required, and by whom, if a SQO is exceeded). We believe the potential actions are reasonably foreseeable, and all could have potentially very large environmental (CEQA) impacts. Therefore, we request the State Water Board more clearly define the proposed CEQA project, and fully consider all the potential environmental consequences of the proposed plan.

¹ CASQA is composed of stormwater quality management organizations and individuals, including cities, counties, special districts, industries, and consulting firms throughout the state, and was formed in 1989 to recommend approaches to the State Water Resources Control Board (State Water Board) for stormwater quality management in California. In this capacity, we have assisted and continue to assist the State Water Board with the development and implementation of stormwater permitting processes.

2.0 Issues and Alternatives

Issue 2.10 What Lines of Evidence are Needed to Assess Sediment Quality?

Baseline: Sediment quality assessment programs throughout the nation rely on MLOE to assess impacts to beneficial or designated uses.

Alternative 1: Do not specify LOE.

Alternative 2: Base policy on application of a single LOE. This alternative would base the policy on a single LOE, such as sediment toxicity, chemistry, or benthic community. Such an approach would be very simple to implement; however, any single LOE is affected by confounding factors, measurement errors, and variability and would contradict the approach recommended by U.S. EPA.

Alternative 3: Base policy on application of MLOE. The suite of tools and LOE would be specific to each receptor.

Staff Recommendation: Alternative 3.

CASQA recommendation: CASQA strongly supports staff's recommendation to base the State's policy and plans on multiple lines of evidence (MLOE) or the triad approach (Alternative 3). As the informational document notes "The State Water Board's Bay Protection and Toxic Hotspots Cleanup Program relied primarily on MLOE to make critical decisions regarding management of sediment in bays and estuaries throughout the State". Using multiple lines of evidence would also be scientifically consistent with virtually all of the estuarine ambient monitoring programs in the country.

Issue 2.11 What Type of Objectives Should be Utilized in the Proposed Policy?

Baseline: Some Basin Plans include narrative requirements; however, implementation is limited and typically relies on BPJ applied on a case-by-case basis.

Alternative 1: Do not adopt SQOs. This alternative would conflict with Chapter 5.6, which requires the State Water Board to adopt SQOs.

Alternative 2: Numeric objectives could be developed and proposed for each LOE. However, each numeric objective would need to be integrated into a weight of evidence approach. The numeric objective would be meaningless without the other LOE.

Alternative 3: Narrative objectives could be proposed that would be implemented using MLOE and corresponding thresholds coupled to a data integration process.

Staff Recommendation: Alternative 3.

CASQA Recommendation: CASQA strongly supports alternative 3, the use of narrative objectives for implementing MLOE and corresponding thresholds coupled to a data integration process.

Issue 2.18 How Should the Data from Each Direct Effects LOE be Integrated?

Baseline: MLOE is integrated based upon BPJ on a case-by-case basis.

Alternative 1: Support an approach based upon BPJ.

Alternative 2: Select an integration method that is based upon a transparent logic-based framework that has been evaluated for accuracy relative to experts and is supported by independent scientific peer review.

Staff Recommendation: Alternative 2.

CASQA recommendation: We strongly support Alternative 2, which would use an integration method that is based upon a transparent, logic-based framework. The supporting discussion demonstrates the sound logic and science to supporting the implementation of the MLOE approach. We especially appreciate and support the State's effort to "test drive" the logic system with independent experts to confirm the logic and accuracy.

Issue 2.19 What are Some of the Interim Tools that Could be Applied to the Delta and Other Estuaries?

Baseline: Not applicable.

Alternative 1: Do not propose any tools for implementing the narrative SQOs until data is collected in Phase II, and the technical team has the time to develop appropriate tools.

Alternative 2: Propose the use of a single LOE for delta waters.

Alternative 3: Propose using sediment toxicity and chemistry to implement the narrative objective. Additional development and evaluation will be required before a detailed approach is proposed. The Scientific Steering Committee was critical of this approach.

Staff Recommendation: Alternative 3.

CASQA recommendation: We support Tri-TAC's comments on this issue as the interim tools described in this section will not have the same scientific foundation as the proposed tools and line of evidence developed for enclosed bays. This is particularly relevant due to the absence of benthic community data or assessments in estuaries. As a result, sufficient data are not available to support the development and validation of assessment tools used for enclosed bays. Since the necessary tools are generally not available in estuaries, we recommend that these interim approaches not be implemented in Phase 1 (i.e., that the State Water Board adopt Alternative 1).

If a decision is made to go forward with some version of the interim tools, we again concur with Tri-TAC's recommendations that the adopted Phase 1 policy state that use of the interim tools will not trigger significant regulatory response beyond a call for data collection, tool development, and validation of lines of evidence. The outcomes from the use of interim tools should generally be "Inconclusive".

Issue 2.21 How Could the SQOs be Applied?

CASQA recommendation: No alternatives are provided, and the wording here is sufficiently vague that it is not at all clear what is intended to be addressed with this section. CASQA requests clarification and additional information, including alternatives considered by the State Water Board for this issue.

Issue 2.22 How Should an Exceedance of the SQOs be Defined?

Alternative 1: Single station using the MLOE integration approach.

Alternative 2: Magnitude and extent would be used to make a determination.

Staff Recommendation: Alternative 2.

CASQA recommendation: CASQA supports Alternative 2, which states that an SQO exceedance be defined based on consideration of multiple stations within a water body, rather than based on results for a single station. However, the current text is ambiguous and could lead to misuse by interested parties. This section should be modified significantly to identify and describe the specific policy and procedure by which the exceedance determinations will be made. We suggest further that magnitude and extent be used in any determination of whether or not a water body is impaired (see also comments on Issue 2.23, below).

Issue 2.23 How Should the SQOs be Used to Determine if a Water Body is Impaired?

Alternative 1: Do not consider the SQOs for listing purposes.

Alternative 2: Utilize the existing approach described in 303(d) listing policy (SWRCB 2004).

Alternative 3: Evaluate a variety of approaches described above for applying SQOs to the listing process.

Staff Recommendation: Alternative 3.

CASQA recommendation: CASQA supports staff's recommendation (Alternative 3). Additionally, CASQA strongly recommends that the proposed categories of impact¹ derived from the scientific evidence be used to optimize the effectiveness of the State's sediment quality objectives program. Prioritizing sites for action based on their impact category (below) will have multiple environmental, economic, and scientific benefits for the State.

1. Clearly impacted - Confidence that sediment contamination present at the site is causing severe adverse direct impacts to aquatic life.
2. Likely impacted - Confidence that sediment contamination present at the site is causing significant adverse direct impacts to aquatic life. There may be disagreement among the LOE, but the evidence for a contaminant-related impact is persuasive.

¹ p. 29, *CEQA Scoping Meeting Informational Document – Development of Sediment Quality Objectives for Enclosed Bays and Estuaries* (August 17, 2006); State Water Board

3. Possibly impacted - Sediment contamination present at the site may be causing significant adverse direct impacts to aquatic life, but these impacts may be moderate or variable in nature. The LOE may agree in indicating a minor level of effect, or there may be substantial disagreement among the LOE.

Focusing the program on the worst-first will have the following benefits:

- Environmental – Those sites with the greatest environmental impact will be addressed first so that their impacts do not last any longer than necessary. Not to focus on the worst-first will only prolong the worst impacts as attention, regulation/enforcement, and funding and other resources are diverted to more and less-impacted locations. Focusing on the worst-first ensures that actions are taken as soon as possible – helping to address concerns that use of the scientific MLOE method will result in too much study and not enough action.
- Economic – Focusing on the worst-first is, by definition, the most cost-effective approach (i.e., biggest bang for the buck).
- Scientific – By definition, the scientific evidence behind clearly impacted sites is the most rigorous and therefore of the highest confidence. The existence of solid data greatly facilitates management decisions, which in turn should expedite developing additional scientific understanding of the implications of those decisions – minimizing the cycle time through the adaptive management loop (monitoring → management decision → monitoring). The early results from adaptively managing the worst sites will generate greater scientific understanding of how to manage contaminated sites in general sooner than if resources were spread across more sites, most of them much less understood than the worst sites.

Additionally, we note that the current Listing Policy (section 3.6) is inconsistent with the proposed SQO MLOE approach. The Listing Policy currently allows a listing based on (1) observed toxicity) and (2) violation of an SQG (like an ERM). This would result in far more, and far more inaccurate, listings than under the MLOE approach. CASQA recommends that the State Water Board either revise the current Listing Policy to be consistent with the proposed SQO water quality control plan, or make it clear in the SQO plan that sediment listings can no longer be made using section 3.6 of the Listing Policy.

Issue 2.24 Could the SQOs be Applied within National Pollutant Discharge Elimination System (NPDES) Permits?

Baseline: Not applicable.

Alternative 1: Do not address implementation of SQOs in NPDES permits.

Alternative 2: Develop translator tools that would enable the calculation of effluent limits from chemistry-based sediment thresholds.

Alternative 3: Propose that the narrative SQOs be applied in NPDES permits as receiving water limits.

Staff Recommendation: Alternative 3.

CASQA recommendation: CASQA generally supports Alternative 3 as we believe that NPDES permits may be an appropriate mechanism to address implementation of SQOs. Given our 15 years of experience managing stormwater quality and the findings of the State’s expert Blue-Ribbon Panel that: “It is not feasible at this time to set enforceable numeric criteria for municipal BMPs and in particular urban discharges.”², Alternative 2 is not a viable alternative for stormwater NPDES permits. CASQA supports staff’s recommendation (Alternative 3) as long as the State first considers a range of implementation actions (e.g., dredging, capping, remediation, discharge limitations) and there is a reasonable assurance that receiving water limitations will address the problem. For that to be the case, the subject stormwater discharges would have to be shown to convey a significant portion of the load to the existing reservoir of pollutants causing the sediment toxicity. CASQA also recommends that to ensure consistency across the State in NPDES permits for stormwater, the adopted plan includes the exact wording of the receiving water limitations permit language, and that as adoption of a water quality control plan is a precedent decision, if a narrative SQO is to be applied to a NPDES stormwater permit, that exact wording be included in permit.

Issue 2.25 Should the Plan Include Follow-up Actions for Permittees When an Exceedance Occurs?

Baseline: Not applicable.

Alternative 1: Do not propose any additional guidance in the plan.

Alternative 2: Develop an approach similar to U.S. EPA’s WET program guidance consisting of an evaluation of the extent of the impact and identification of the stressors that are causing or contributing to the degradation of sediment quality.

Staff Recommendation: Alternative 2.

CASQA recommendation: CASQA supports staff’s recommendation (Alternative 2). Providing guidance in the plan will promote statewide consistency. Additionally, consistent with changes to previous non-specific 303(d) listings like “unknown toxicity” recently adopted by the State Water Board and to avoid creating future non-specific listings, CASQA recommends that stressor identification be done before either (1) listing or (2) selection of management/implementation actions.

3.0 Preliminary Draft Plan

A. Receiving Water Limits

This section on page 52 of the information scoping document states in part: “The SQOs shall be implemented as receiving water limits in NPDES permits where the Regional Water Board

² p. 8, *Storm Water Panel Recommendations to the State Water Resources Control Board, The Feasibility of Numeric Effluent Limits Applicable to Discharges of Storm Water Associated with Municipal, Industrial and Construction Activities*, Blue-Ribbon Panel; June 19, 2006

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believes there is the reasonable potential that the discharge of toxic or priority pollutants may cause or contribute to an exceedance of an applicable SQO or SQOs.”

CASQA recommendation: As stated above under Issue 2.24, CASQA recommends the following language, which is an adaptation of the receiving water quality limitations language found in most municipal stormwater permits:

The discharge shall not cause or contribute to a violation of any applicable sediment quality standard for receiving waters. If applicable sediment quality objectives are adopted and approved by the State Water Board after the date of the adoption of this Order, the Regional Water Board may revise and modify this Order as appropriate.

B. Summary of Plan

CASQA recommendation: Several Regional Water Board Basin Plans already include water quality objectives that relate to sediment or sediment toxicity and at least two of these objectives have been translated into waste load allocations in a TMDL³. To promote consistency and to develop a comprehensive statewide plan, the proposed State Water Board water quality control plan for sediment quality for enclosed bays and estuaries should:

- require the review of these existing water quality objectives in all Basin Plans
- include an analysis of the consistency between these existing water quality objectives and the new State sediment quality objectives and, to the extent that these existing water quality objectives are potentially inconsistent with the new State sediment quality objectives, describe the State’s plan for modifying existing TMDLs and/or NPDES permits to be consistent with the State’s SQO plan.

These are some of our comments on this initial staff proposal. Thank you again for the opportunity to provide early comments and we look forward to working with staff on subsequent drafts. Please contact me at (916) 808-1434 or our Executive Director, Geoff Brosseau (650) 365-8620 if you have any questions or we can provide further assistance.

Sincerely,



Bill Busath, Chair
California Stormwater Quality Association

cc: CASQA Board of Directors and Executive Program Committee

³ *Amendment to the Water Quality Control Plan for the San Francisco Bay Region (Basin Plan) to establish a Water Quality Attainment Strategy and Total Maximum Daily Load (TMDL) for Diazinon and Pesticide-related Toxicity in Bay Area Urban Creeks*, State Water Board; adopted November 15, 2006. Also *Amendment to the Water Quality Control Plan for the Los Angeles Region (Basin Plan) to Incorporate a Total Maximum Daily Load (TMDL) for Toxic Pollutants in Ballona Creek Estuary*, Resolution No. R5-008, July 7, 2005.